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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE, Plaintiff and Respondent, v. THOMAS DANIEL HOVANSKI, Defendant and Appellant.	C079737 (Super. Ct. No. MHO070000001)

Defendant Thomas Daniel Hovanski appeals from his recommitment after a court trial as a Sexually Violent Predator (SVP), contending that--despite his criminal convictions for violent sexual offenses against a previous partner's young daughters--no substantial evidence shows he is likely to commit *predatory* violent sexual offenses, that is, offenses against strangers. Disagreeing, we affirm.

BACKGROUND

The court trial was based on the reports of two psychologists and several updates to those reports, other records, and a probation report. No live testimony was taken.

Defendant had been convicted, inter alia, of continuous sexual abuse of two young girls, the daughters of a woman with whom he had fathered a child in April 1994. He received a 16-year prison sentence, and we affirmed his convictions in 1996. (*People v. Hovanski* (Oct. 28, 1996, C020724) [nonpub. opn.] at p. 2.)

The original SVP petition was filed on January 26, 2007. The trial was not conducted until 2015, for reasons not now relevant, except that it necessitated supplemental reports that were prepared by the two psychologists who had provided the original probable cause reports.[1]

The probation report from the original case, introduced as an exhibit at trial, reflects that defendant, born in 1963, had been convicted in Washington State for badly beating his then two-year-old son in April 1993. Defendant was placed on probation with a condition that he have no contact with children under the age of 16 without approval of his probation officer, yet by June 1993 he had moved in with Jana, a woman who had three young children, including two young girls. After his probation officer ordered him to move out, he lied and continued to live with Jana. When Washington officers came to Jana's home in August 1993 to check on him, defendant fled. Jana and defendant had begun living together in September 1992, while she lived in Washington with her three children, E., a girl born in 1986, J., a girl born in 1985, and an older boy. In December 1993 they all moved to Yuba County. In April 1994, Jana gave birth to defendant's daughter, M.

Defendant often bathed with E., then age 6. As convicted, according to the probation report, from January to August 1994, defendant "on more than ten occasions"

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[1] Defendant was held past his parole date, and we upheld that action. (See *In re Hovanski* (2009) 174 Cal.App.4th 1517.) The trial was then delayed for other reasons. (See *In re Ronje* (2009) 179 Cal.App.4th 509, disapproved by *Reilly v. Superior Court* (2013) 57 Cal.4th 641, 655.)

had E. orally copulate him, and he also placed his mouth on her vagina and chest, and rubbed his penis against her body and her vagina. He would have her undress him and then masturbate in her plain view, sometimes while watching pornographic magazines or movies. During that same period, defendant repeatedly touched, rubbed, or pinched J.'s breasts and nipples, fondled her vagina, and rubbed his penis near her vagina. He also masturbated in front of J., and took showers with her. During that same period, he physically assaulted Jana, hitting her in the face, blackening her eye, and telling her that if she called law enforcement or tried to leave him he would find her and kill her. When interviewed on August 24, 1994, defendant tried to flee, injuring a deputy.

The probation report states that the girls considered defendant to be "a stepfather." It is this general circumstance that underlies much of defendant's reasoning on appeal, i.e., that he was not a *predator* because he was a de facto *family member*. However, each of the two appointed psychologists were of the view that defendant entered into a family relationship with Jana in part in order to gain access to her children. As we discuss *post*, there were also major concerns regarding defendant's behavior with neighborhood children in his Stanislaus County community.

In particular, Dr. Christopher North's report states in part:

> "It appears that Mr. Hovanski developed a relationship with Jana [], at least in part, so that he could molest her children. He appears to have engaged in frequent and substantial sexual activity with both her daughters. He may have engaged in some 'grooming' behavior with children in the community while on parole but the circumstances are somewhat unclear and he was never actually charged with molesting a child in the community. Given his history, however, it is this evaluator's opinion that he is likely to establish or promote a relationship with a child, in the future, so as to molest her. He does appear to be at risk for committing a new predatory sexual offense."

Dr. North had originally interviewed defendant for about two hours and 40 minutes in December 2006, but defendant declined further interviews.[2] Dr. North administered the standard SVP diagnostic tests. In his consistent opinion over time, defendant met the definition of an SVP. Even after defendant allowed a further interview in 2014, Dr. North's opinion, reflected in his February 2014 update to his original report, remained the same.

The second doctor, Dr. Hy Malinek, also prepared a report, which is consistent with Dr. North's regarding defendant's predatory behavior:

> "In this case, it certainly appears that Mr. Hovanski promoted his relationship with Jana's daughters for the purpose of victimization. A strong predatory element appears to have been present in the 2003 parole violation which involved his luring neighborhood children to his home by paying them to work for him, and then apparently exposing himself to them."

Dr. Malinek, too, had interviewed defendant in December 2006, but defendant had declined further interviews. Dr. Malinek, too, administered the various standard SVP diagnostic tests. He, too, consistently opined that defendant met the statutory definition of an SVP. After defendant participated in the 2014 interview, Dr. Malinek's opinion, reflected in his the February 2014 update to his original report remained the same.

As described in the various reports considered by the doctors, defendant had been released on parole to Stanislaus County in 2002, married a woman, and moved in with her and her minor son, lying to his parole officer about his residence. When parole officers investigated, defendant fled, and was captured in Yuba County. Modesto police officers spoke with parents in the Stanislaus County neighborhood, a number of whom reported disturbing behavior by defendant. He befriended children and paid them to do

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[2] After a post-*In re Ronje* probable cause hearing, the People obtained orders compelling defendant to participate in further interviews. (See § 6603, subd. (c)(1).) In January 2014, he spoke 90 minutes with Dr. Malinek and 30 minutes with Dr. North.

work around his residence. One parent reported that he hired her three sons to work on a roof, and " 'ordered them' " to remove their shirts while working, and once the three boys (aged 7, 10, and 12) spent the night at defendant's house. The youngest of these boys told the officers that defendant gave him candy and juice and asked him to go to the store with him and spend the night at his house. He had been paid to work on defendant's roof and defendant hugged him and rubbed his own crotch area in front of the boy often. Another of the three brothers said defendant insisted on slathering all three brothers with sunscreen, though defendant did not use any on his own body. The 12-year-old boy visited defendant "periodically" and told officers that defendant would often work around outside the house in boxer shorts, with his penis flopping out. A 13-year-old girl from the neighborhood told officers that defendant paid her to do housework and he would walk around the house in his boxer shorts with his penis exposed, and sometimes (while exposed) defendant would fondle his penis and grin at her. In all, the Modesto police officers interviewed seven minors who said they spent much time at defendant's residence. On many occasions, he would wear only boxer shorts and his penis would sometimes become exposed, "requiring the subject to grab himself in their presence." A woman who lived across the street reported she saw defendant wearing boxer shorts while washing his car. Defendant would roll the waistband down so it barely covered his pubic area, and his penis would become exposed. Then defendant " 'would take his hand and shake his shorts and grab himself.' "

Defendant did not tell his parole officer his true address and had not registered as a sex offender. No charges were filed for any of the above conduct, but defendant's parole was revoked, then he was again paroled in August 2004.

Two months later, defendant's then-wife (L.) filed domestic violence charges against him. When his parole officer called him on his cell phone, defendant refused to give the officer his location and refused instructions to turn himself in. Although L. later recanted, defendant's parole was again revoked. After various other proceedings and

revocations, defendant was paroled in June 2006. In July 2006 defendant's parole was again revoked when his new girlfriend reported domestic violence. He was later convicted of misdemeanor domestic violence, and his parole was again revoked.

Defendant was long in denial about sexual misconduct, refused therapy, and had numerous behavioral incidents while confined, including abuse of staff. He did admit he had molested Jana's children.

In the 2014 interview with Dr. Malinek, defendant denied exposing himself to children in the Modesto neighborhood, and claimed the neighbors turned on him when they found out he was a sex offender. Although defendant claimed he had participated in a sex offender program, Dr. Malinek found it "hard to see" how he benefited from it, "given his conduct on parole . . . and his conduct at the hospital." Dr. Malinek did not believe defendant's risk of reoffense had changed, and he noted defendant was housed "in a unit designed especially for volatile and dangerous individuals who require substantial structure and containment."

Dr. North's report after his 2014 reinterview states defendant had 61 police reports while at Coalinga State Hospital, and he reviewed those reports in making his evaluation. Defendant is housed in "a unit reserved for the most difficult patients" and "continues to be hostile towards staff" as shown by incidents summarized in the report. Defendant denied he was a pedophile and claimed Jana "invited the girls into bed with them." He is "highly antisocial and continues to refuse sex offender treatment" and is likely to "engage in sexually violent predatory behavior if not retained and treated in a custodial environment."

After considering all the reports and hearing argument from counsel, the trial court found defendant met the SVP criteria and ordered him recommitted for an indeterminate term. Defendant timely appealed.

DISCUSSION

An SVP is "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)[3]

The factfinder " 'must conclude that the person is "likely" to reoffend if, because of a current mental disorder which makes it difficult or impossible to restrain violent sexual behavior, the person presents a *substantial danger*, that is, a *serious and well-founded risk*, that he or she will commit such crimes if free in the community.' [Citation.] This standard requires 'much more than the mere *possibility* that the person will reoffend,' but it does not call for 'a precise determination that the chance of reoffense is *better than even*.' " (*People v. Flores* (2006) 144 Cal.App.4th 625, 632.)

Predatory sexual conduct must be likely (see § 6000, subd. (e)), not merely *criminal* sexual conduct. " 'Predatory' means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, *or an individual with whom a relationship has been established or promoted for the primary purpose of victimization*." (§ 6600, subd. (e), italics added.) The reason for this distinction is that "[b]ecause predatory offenders could strike at any time and victimize anyone, they pose a much greater threat to the public at large. In contrast, a defendant likely to commit crimes only against family members or close acquaintances is less likely to reoffend because potential victims will be aware of the defendant's status as a sex offender. The public at large, however, is inevitably more defenseless against acts committed by strangers." (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1187-1188.)

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[3] Further undesignated statutory references are to the Welfare and Institutions Code.

The standard of review over an SVP finding is the same as that used in criminal appeals. (See *People v. Mercer* (1999) 70 Cal.App.4th 463, 465-466.) "[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see *People v. Flores, supra*, 144 Cal.App.4th at p. 232.) The standard of review for substantial evidence applies equally to contests based on written evidence, such as this one. (See *Doak v. Bruson* (1907) 152 Cal. 17, 19; *California Correctional Supervisors Organization, Inc. v. Department of Corrections* (2002) 96 Cal.App.4th 824, 832.)

The gist of defendant's appellate claim is straightforward:

> "In this case, there is no evidence that appellant is likely to engage in predatory acts of a sexually violent behavior as defined by the statute. The 1994 commitment offenses did not meet the criteria of section 6600, subd. (e). While the two prior offenses meet the statutory definition of sexually violent offenses, they were not committed against strangers."

We agree defendant's convictions were not based on behavior against strangers, and, solely for purposes of argument in this appeal, we are willing to accept they were not based on a relationship he formed or maintained for the *sole* purpose of gaining access to the child victims. However, we need not resolve that issue, because there is abundant evidence defendant groomed and sexually abused children unrelated to him, supporting the trial court's finding that he is likely to commit *predatory* sexual offenses in the future.

Defendant minimizes the reports of the children and neighbors regarding his actions while on parole in Stanislaus County. Although he denied to both doctors that the events occurred as reflected by the police reports, he does not challenge the ability of the

doctors to rely on that material in assessing defendant's risk of predatory reoffense.[4]

Instead, defendant contends his actions (except perhaps indecent exposure) would not qualify as sexually-predatory offenses. He ignores the evidence that he often hugged one boy and rubbed lotion on several boys, arguably reflecting lewd intent. But in any event, defendant cites no authority for the view that a finding *of risk* that a person will commit predatory activities must be based on *convictions* for predatory sexual conduct. Instead, the evidence defendant enticed children to his house, gave them money and candy, asked them to sleep over, exposed his penis, and rubbed his crotch in the presence of children with whom he had no familial or quasi-familial relationship, supports the inference that he was grooming them for sexual purposes. Given his past willingness to commit serious sexual offenses against children, it was rational for the trial court impliedly to conclude that it was only fortuitous that his activities were brought to the attention of the Modesto police before they escalated to the kind of serious sexual molestations defendant committed in the past.

Further, that defendant denies those actions, refuses treatment, and even denies he is a pedophile, supports the conclusion that, outside the confines of a very secure facility, he poses a serious risk of victimizing strangers.

Defendant also argues his actions against the neighborhood children in Modesto were *so* brazen that "the [indecent] exposure was an end in itself, not a prelude to predatory conduct." That is not the only rational inference to be drawn. The trial court could rationally conclude that defendant's conduct was so brazen because he has no

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[4] At one point, defendant cites a case stating the proposition that: "It is the general rule that 'the uncontradicted testimony of a witness to a particular fact may not be disregarded, but should be accepted as proof of the fact.' " (*Krause v. Apodaca* (1960) 186 Cal.App.2d 413, 417.) He omits, however, that case's mention of the rule that "[p]rovided the trier of the facts does not act arbitrarily, he may reject *in toto* the testimony of a witness, even though the witness is uncontradicted." (*Id.* at p. 419.)

governors whatsoever on his sexual behavior, which makes him *more*--not *less*--prone to reoffend against strangers in a sexually violent, predatory way, if released.

On this record, the trial court could rationally find that defendant was likely to commit sexually violent predatory offenses, as defined by the statute, in the future, and therefore was an SVP.

DISPOSITION

The order of recommitment as an SVP is affirmed.

/s/
Duarte, J.

We concur:

/s/
Nicholson, Acting P. J.

/s/
Murray, J.